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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,010	07/07/2003	Albert Harold Robbins	2003_0926	4507

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EXAMINER

GLESSNER, BRIAN E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/613,010

Applicant(s)

ROBBINS, ALBERT HAROLD

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,4,6,8 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,5,7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/7/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The following office action is in response to the election filed on August 23, 2004. The applicant elected Group III and Species B. Therefore, claims 3, 5, 7 and 9 will be examined as being drawn to the elected invention.

Election/Restrictions

Applicant's election with traverse of the restriction and election of species in the reply filed on August 23, 2004 is acknowledged. The traversal is on the ground(s) that the examiner improperly considered claims 3-10 as being drawn to a method of blocking a material, i.e. a tent when, in fact, the claims are merely drawn to a method of blocking material. The applicant states that since claim 1 is drawn to a method of condensing water, the two groups should be combined. This is not found persuasive because the two groups of claims are claiming two distinct inventions. Group I is claiming a method of condensing water and Group III is claiming a method of blocking material from entering an area. There is nothing in the claims of Group III that claim anything about condensing water. Therefore, just because the claims of Group III block water, i.e. fog, it does not mean that they condense water. The fog could merely float over the flexible surface and continue on its way. Thus, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Capita (2,411,316).

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In regard to claims 3 and 7, Capita discloses a method of blocking a material from entering an area having a perimeter with a flexible surface having a length and a height and being connected directly to an element, said method comprising securing the element 10, securing the flexible surface (i.e. the surface shown in figure 3 extending to the ground) to the perimeter of the area, and inflating the element 10 with sufficient lighter-than-air gas to lift the element and at least a portion of the flexible surface, wherein the flexible surface lifted by the inflated element is inherently capable of blocking material from entering the area.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capita (2,411,316).

In regard to claims 5 and 9, Capita discloses the claimed method, but does not specifically disclose that the material blocked from entering the area is fog. It would have been obvious to one having ordinary skill in the art that fog would be blocked from entering the structure, because if it were foggy outside around the structure, the fog would not be capable of penetrating through the walls of the structure. Therefore, the fog would be blocked.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuboyama, Boyle, Sevilla, Hill, Glode, Kelly, Veazey, Charbonneau, and Gleich.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday through Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Brian E. Glessner
Primary Examiner
Art Unit 3635

B.G.
October 27, 2004